

November 27, 2007

Mr. Jerry Brooke
Deputy City Attorney
City of Fort Benton
1204 Front Street
P.O. Box 8
Fort Benton, MT 59442-0008

Re: Request for Attorney General's Opinion

Dear Mr. Brooke:

This letter is in response to your request for an Attorney General's opinion on reserve officer residency requirements. According to your letter, the City of Fort Benton has "hired" reserve officers who reside outside of Choteau County.¹ The Choteau County Sheriff challenges this practice and has threatened to divest these officers of their authority by seizing all law enforcement identification and returning it to the police chief. You question whether the sheriff has supervisory powers over the management and hiring of a city police department. You also question the meaning of Mont. Code Ann. § 7-32-216(3)(b), requiring that reserve officers be supervised by a full-time law enforcement officer "whose span of control would be considered within reasonable limits."

Because your question regarding residency of these officers is resolved by statute, an informal letter of advice is the appropriate disposition as opposed to a formal Attorney General opinion. The other questions are necessarily resolved by the answer to your first question and will not be addressed.

The qualifications of reserve officers, including residency requirements, are addressed in Mont. Code Ann. § 7-32-213:

Qualifications for appointment as reserve officer. To be appointed a reserve officer, a person:

¹ By definition, reserve officers are volunteers, not employees. Mont. Code Ann. § 7-32-201.

- (1) must have resided in the state continuously for at least 1 year prior to the appointment and in the county where the appointment is made for a period of at least 6 months prior to the date of the appointment;
- (2) must be a citizen of the United States;
- (3) must be at least 18 years of age;
- (4) must be fingerprinted, and a search must be made of local, state, and national fingerprint files to disclose any criminal record;
- (5) may not have been convicted of a crime for which the person could have been imprisoned in a federal penitentiary or state prison;
- (6) must be of good moral character as determined by a thorough background investigation;
- (7) must be a graduate of an accredited high school or the equivalent;
- (8) must be examined by a licensed physician within 30 days immediately preceding the date of appointment and pronounced in good physical condition; and
- (9) must possess a valid Montana driver's license.

As this statute makes clear, reserve officers must have been residents of Montana for one year and residents of the county for at least six months prior to the date of their appointments. While reserve officers may change permanent residency to another county and remain a member of the reserve officer unit to which the reserve officer was appointed (Mont. Code Ann. § 7-32-222), a reserve officer who does not meet the residency requirements of Mont. Code Ann. § 7-32-213 or § 7-32-222 may not be appointed to serve in that capacity.

There are similar residency requirements for law enforcement officers in Title 7, chapter 21, part 3. Mont. Code Ann. § 7-32-301. Unlike reserve officers, however, the residency requirement for law enforcement officers may be waived at the discretion of the person or body authorized by law to appoint special deputies, marshals, or policemen. Mont. Code Ann. § 7-32-302. You suggest that reserve officers may qualify as “special deputies, marshals or police men,” so that the waiver provisions apply. The statutes, however, do not support this conclusion.

Reserve officers are part-time volunteers whose arrest authority is dependent on the law enforcement agency’s authorization. Mont. Code Ann. § 7-32-201(4). Their qualifications are set forth in Title 7, chapter 32, part 2. A “law enforcement officer” is a full-time employee with full statutory arrest authority as described in § 46-6-210. Mont. Code Ann. § 7-32-201(5). The qualifications of a law enforcement officer are set forth in Title 7, chapter 32, part 3. The waiver of residency provision appears in part 3, applicable to law enforcement officers, and there is nothing comparable under the provisions relating to reserve officers. In other words, reserve officers are a distinct

Mr. Jerry Brooke
November 27, 2007
Page 3

category of officers with their own set of qualifications, none of which allow waiver of the residency requirement.

In light of the clear requirements of § 7-32-213, I conclude that the City of Fort Benton may not appoint reserve officers who live outside Choteau County unless those officers otherwise qualify for residency under Mont. Code Ann. § 7-32-222. Because your second question is dependent on these officers being properly qualified as residents, it will not be addressed. Likewise, it is unnecessary to resolve the question of the sheriff's authority because, absent proper residency, these officers fail to meet statutory qualifications and have no authority to serve in the first instance, irrespective of the Sheriff's actions.

Please be advised that this letter may not be cited as a formal opinion of the Attorney General.

Very truly yours,

JENNIFER ANDERS
Assistant Attorney General

ja/jym